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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,789	11/19/2002	Ted W. Haan	RAP04 P-634A	4748

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EXAMINER
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SHARMA, RASHMI K

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/065,789

Applicant(s)

HAAN ET AL.

Examiner

Rashmi K. Sharma

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20, 33-60 and 73-82 is/are allowed.
- 6) ☒ Claim(s) 21-29 and 61-63 is/are rejected.
- 7) ☒ Claim(s) 30-32 and 70-72 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21, 27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21, 27 and 29 have instances of a lack of antecedent basis. The terms "said conveying" in claim 21, "the sorter load parameter" in claim 27, "said transport conveyor" in claim 29 lack antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-29 and 61-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Byrnes et al. (U.S. Patent number 3,011,621).

Byrnes et al. disclose an apparatus and method of a sorter assembly for receiving product and for sorting that product to a series of sortation lines (figure 1, side ledge conveyors 1, 2 and 3) comprising a slug building assembly (8) which builds

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product slugs wherein product slugs are discharged from a conveying surface (surface of 8) and supplied for sortation by the sorter assembly (1, 2 or 3), a control (CP1, CP2, CP3) determining a sorter time parameter indicative of a rate of product being sorted by the sortation assembly (1, 2 or 3) and wherein the control affects operation of the slug building assembly as a function of the sorter time parameter whereby the rate of product released by the slug building assembly is matched with the rate of sortation of product at the sorter assembly (read column 1 lines 32-43), two product detectors (LS 4 or LS 5 and LS1, LS2 or LS3) for detecting two parameters of the product (the parameters being which numbered product is being detected within the slug formation and/or the position or location of each product within the slug formation), whereby the control receives the outputs of both product detectors allowing the system to evaluate whether or not it needs to restrict or continue the building of the product slug based on the sorter time parameter determined around the sorter assembly, whereby the discharging of the product is a function of the speed at which the sorter assembly is moving so that the slug building assembly rate is matched to the rate of sortation of the product sorter, and an induct (area around on conveyor 8 just before the products are diverted to the sorter assembly) providing controlled gaps between the products.

***Allowable Subject Matter***

Claims 1-20, 33-60 and 73-82 have been allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Independent claims 1 and 41 and dependent claims 30 and 70 recite the structural limitation of an apparatus and method of a sortation system comprising at least one of the supply lines including an accumulation conveyor and a slug conveyor, said accumulation conveyor accumulating product in slug portions comprising a plurality of product, said slug conveyor combining slug portions into product slugs, in combination with the rest of the recited structure, clearly defines over the prior art.

Independent claims 33 and 73 recite the structural limitation of an apparatus and method of discharging product to the conveying surface to build slugs wherein the conveying surface receives product from the accumulation conveyor at a first continuous speed to build slugs and discharges slugs of a product at a second speed that is substantially higher than the first speed, in combination with the rest of the recited structure, clearly defines over the prior art.

Independent claims 81 and 82 recite the method and apparatus limitations for all the claims listed above, in combination.

Claims 30-32 and 70-72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-82 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rashmi K. Sharma whose telephone number is 703-306-5952. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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